

The 2nd February, 1985

No. 9/5/84-6Lab/803.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Remington Rand of India Ltd., Mathura Road, Faridabad :—

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 371/1981

between

SHRI BABU KHAN, WORKMAN AND THE MANAGEMENT OF M/S REMINGTON RAND OF
INDIA LIMITED, MATHURA ROAD, FARIDABAD

Present:—

Shri H. R. Dua for the workman.

Shri Rajesh Sharma and Shri R.N. Rai, representatives for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Babu Khan, workman, and the Management of M/s Remington Rand of India Limited, Mathura Road, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Babu Khan was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the demand notice, dated 2nd August, 1981, which was treated as claim-statement on 29th December, 1981, it was alleged that the claimant was engaged by the respondent Company at Faridabad initially on temporary basis, but was confirmed later on and was drawing Rs. 500 per month. It was then alleged that service conditions of the workman employed at Faridabad were very poor and that the workman had formed a trade union titled as Remington Rand Karmchari Union (Regd. No. 420) and that the claimant was elected as General Secretary of the said Union. It was further alleged that on 12th March, 1981, the union intimated the names of the office-bearers and protected workmen of the union, including the claimant. It was further alleged that on 29th January, 1979, the Management entered into settlement which was not implemented by the respondent company due to which the Union felt aggrieved and the claimant took a leading part in making complaints to higher authorities. It was further alleged that the settlement became mature and was terminated when a charter of demands was served on the management by the Union. It was then alleged that during the pendency of the charter of the demands, the management inflicted atrocities on the poor members of the Union and declared lock-out in the factory, which action was challenged by the Union through the claimant. It was further alleged that the management was determined to terminate the services of the claimant and served a false and fabricated charge-sheet on the claimant and appointed Shri S. D. Sharma as Enquiry Officer who was not an independent person. It was further alleged that the claimant filed a suit to set aside the appointment of the Enquiry Officer during the pendency of the suit. The Enquiry Officer held the enquiry in a private house. It was further alleged that the claimant made a request to the Enquiry Officer that he be permitted to be represented by another colleague, but his request was turned down by the Enquiry Officer and that he fixed the enquiry for 29-3-1981, but neither the Enquiry Officer nor any person on behalf of the management came to the place of the Enquiry when the claimant rushed to the factory and apprised the Plant Manager about the same, but his letter was not taken and the claimant sent a telegram to the Enquiry Officer. It was further alleged that the claimant sent a confirmation letter on 6-4-1981, but his services were terminated by the management,—vide letter, dated 18-4-1981 in an illegal manner and against the principles of natural justice and as such, the claimant was entitled to reinstatement with full back wages.

3. The respondent in its written statement, dated 12-1-1982, pleaded that the claimant sent a demand notice directly to the Conciliation Officer and no industrial dispute was raised with the management and as such, no industrial dispute existed between the parties. It was further pleaded that the claimant was a confirmed employee but was drawing Rs. 490 per month inclusive of all allowances. It was further pleaded that Unit at Faridabad was still in the infancy stage and was engaged in the manufacture of portable typewriters, the demand for which is very limited. It was then pleaded that settlement, dated 29-1-1979 was arrived at with the Remington Rand Karmchari Union and that the claimant was one of the signatories but, there was some difficulty in introducing incentive scheme for which negotiations were going on and certain correspondence also took place between the Management and Union. It was then pleaded that the Union served a termination notice of said settlement

and after expiry of the said settlement the Union again submitted demand notice, dated 28-4-1980, which was taken up by the Conciliation Officer. It was then pleaded that the management has signed a settlement on 5-12-1977 with the other Union known as Remington Rand Employees Union, which operated till 31-3-1980, but, the said Union terminated the settlement,—vide letter, dated 6-2-1980 and submitted a fresh draft of demands, dated 29-7-1980. It was pleaded that the Union and its members resorted to go slow tactics and later on resorted to activities subversive of discipline involving violence inside and outside the factory, due to which the management had to resort to temporary suspension of manufacturing activities when a settlement, dated 6-8-1980 was arrived at through the mediation of the Labour Department. It was denied that the management declared any lock out, but it had to resort to temporary closure of the factory on the ground of violence inside and outside the factory. It was then pleaded that the claimant was dismissed from service of the company on account of major misconduct committed by him while in service of the company and he was served to charge-sheets, dated 24-8-1980 and 15-9-1980 when a domestic enquiry was held against him and that an independent person was appointed as Enquiry Officer. It was pleaded that the claimant participated in the enquiry upto 28-2-1981 but thereafter he started evading the enquiry on one pretext or another and filed civil suit for injunction against the Enquiry Officer and the management, which was dis-allowed by the Civil Court and the Enquiry Officer resumed enquiry proceedings with effect from 29-3-1981, but the claimant failed to appear in the enquiry in spite of notice due to which the Enquiry Officer ordered *ex parte* proceedings against the claimant and recorded the evidence of the management's witnesses and after completing the *ex parte* enquiry, he submitted his report containing his findings. It was then pleaded that the Enquiry Officer had sent a telegram, dated 29-3-1981 asking the claimant to appear before him in the enquiry which was duly received by the claimant between 7.15 A.M. to 10.35 A.M. on 30-3-1981 and the telegram was also sent by the management to the claimant 30-3-1981 which was duly received by the claimant on the same day between 4.35 to 9.00 P.M. It was pleaded the enquiry was held in the guest house of the company. It was further pleaded that on 29-3-1981, the claimant was advised by the security staff of the factory to go to the guest house and participate in the enquiry but instead of doing so he sent a telegram to the Enquiry Officer alleging that the Enquiry Officer was not present and that the Enquiry Officer sent telegram to the claimant refuting his allegation and that likewise the management also sent a telegram to the claimant. It was further pleaded that on receipt of the report of Enquiry Officer, in which the claimant was found guilty, the claimant was dismissed from service with effect from 8-4-1981 and since he was dismissed in a legal manner, he was not entitled to any relief.

4. The claimant in his replication, dated 2-2-1982, reiterated pleas taken in the demand notice (claim statement).

5. On the pleadings of the parties, the following issues were framed on 2-2-1982 :—

- (1) Whether the demand notice was served upon the management ? If so, to what effect ? OPM
- (2) Whether the enquiry is fair and proper ? OPM
- (3) Whether the workman was victimised ? OPW
- (4) Whether the termination of service of Shri Babu Khan was justified and in order ? If not, to what relief is he entitled ? OPM

Issues Nos. 1 to 3 were tried as preliminary issues.

6. The management examined two witnesses and documents, Exhibit M-1 to M-41 have been tendered into evidence. The claimant himself appeared in the witness-box and documents Exhibit W-2 to W-48 have been tendered into evidence. After going through entire evidence both documentary and oral, and hearing the representatives of both the parties, my findings on the above issues are as under :—

Issue No. 1.

7. The management has examined MW-1 Shri S. D. Sharma, Enquiry Officer, who did not depose anything on this issue. M-W-2, Shri J.R. Ratra, Time Office Incharge of the respondent, stated that the demand notice of the workman was received through Conciliation Office,—vide documents Exhibit M-35 and M-36. No other evidence has been led by the respondent. Thus none of the witnesses produced by the management stated that original demand notice which was addressed to the respondent, was not received by them. Documents Exhibit M-35 and 36, show that Labour-cum-Conciliation Officer, Sector 7 had forwarded the notice to the management. Since no evidence on behalf of the respondent has been led to the effect that the original demand notice was not received by them, therefore, it cannot be held that original demand notice was not received by them. The rulings reported as *Sindhu Resettlement Corporation Ltd.*, and *Industrial Tribunal of Gujarat and others*, F.L.R. 1968 (16) page 307 (S.C.), *Fedders Leoyd Corporation Private Ltd. and Lieutenant Governor Delhi and others*, F.L.R. 1970 (2) page 343, and *New Delhi Tailoring Mazdoor Union and S.C. Sharma*, F.L.R. 1979 (39) page 195, in which it is laid down that the demand by the workman must be raised on the management, are distinguishable on facts. Consequently, the respondent has failed to prove that no demand notice was served upon the management. Issue No. 1 is decided accordingly against the management.

Issue Nos. 2 and 3.

8. Both these issues are interlinked and as such can be decided together conveniently. The management had examined MW-1 Shri S.D. Sharma, Personnel Officer of M/s Usha Spinning and Weaving Mills, who deposed that he was appointed Enquiry Officer *vide*,—letter Exhibit M-1 and that he received documents Exhibits M-2 to M-4 with that letter. He further stated that he fixed the date of the enquiry and informed the claimant, but, the claimant did not appear. He wrote another letter, copy Exhibit M-6 when the workman appeared. He further stated that Exhibit M-7 was the copy of the enquiry proceedings and that Exhibit M-8 to M-21 were the copies of the letters which were produced during the enquiry. He then stated that the workman participated in the enquiry proceedings up to 1st February, 1981 and that he prayed that Shri H.R. Dua advocate of Shri Dalip Singh, who were outsider be permitted to represent him in the enquiry, but, the request of the workman was not acceded to because according to certified Standing Orders of the company copy Exhibit M-30, the outsider could not represent the claimant. He further stated that claimant wanted adjournment of the enquiry proceedings to file a Civil Suit when the enquiry was adjourned to 17th January, 1981, but, no stay order, was produced by the claimant when the enquiry was started on 17th January, 1981 and that statement of Shri A.S. Sethi was recorded, but the claimant did not cross-examine this witness even though an opportunity was given to him in that respect, when the enquiry was adjourned to 1st February 1981. He further stated that on 1st February, 1981, the claimant prayed that Shri Sadakat Hussain be permitted to represent him in the enquiry, but the request was not accepted because an objection was raised by the respondent side that he was a suspended workman and that the enquiry was adjourned to 29th March, 1982. He further stated that the claimant was duly informed regarding the said date *vide*,—letter copy Exhibit M-31. He further stated that since the claimant did not appear on 19th March, 1981, *ex parte* proceedings were held against him. He also stated that after recording some evidence on that date he sent a telegram to the claimant copy Exhibit M-32, while another telegram copy Exhibit M-33 was given by the management and that the claimant received both these telegrams. He further stated that the enquiry was completed by him and he submitted his report Exhibit M-34 when he found the claimant guilty of the charges levelled against him. Documents Exhibit M-36 to M-41 have also been proved by the respondent.

9. Shri Babu Khan claimant appeared as WW-1 and stated that he was employed in the respondent factory as fitter on 22nd January, 1975 and that a Union known as Remington Ran Karamchari Union was formed in the year 1978 of which he was the General Secretary and that a settlement took place in the year 1979 copy Exhibit W-4, which was not implemented and that he wrote letters to the management, copies Exhibit M-5 to M-8, but the management was not behaving properly. He further stated that when he asked the management to implement the settlement, the management told him that he would be turned out. He further stated that Exhibit W-9 was the letter received from D.L.C. and a meeting was held by him and the letter Exhibit W-10 terminating previous settlement was written when the union raised a fresh demand, copy Exhibit W-11, and no settlement took place and he wrote letter copy Exhibit W-12, when the management sent the reply, Exhibit W-13. He further stated that the management arrived at a settlement with the other union on 6th August, 1980 even though the registration of the second union had already been cancelled *vide*,—letter Exhibit W-14. He then stated that lay off was resorted to and thereafter lock out of the factory took place. He then stated that demand notice copy Exhibit W-3 was given by the Union that the lock-out was illegal and that conciliation proceedings were also held,—*vide* copy of the proceedings Exhibit W-15 but no settlement took place. He then stated that an application signed by 208 workmen of the Union was given to the Labour Commissioner, Haryana, copy Exhibit W-16, but, no settlement took place. He further stated that there were five protected workmen in the Union and they have informed the Management in that respect,—*vide* letter copy Exhibit W-17, but, the management raised objection,—*vide* letter copy Exhibit W-18 that only name of 5 protected workmen were to be given to the management and,—*vide* copy Exhibit M-19 names of the protected workmen were given to the management which are accepted by letter copy Exhibit W-20. He further stated that another list of protected workmen was given on 27th March, 1980,—*vide* letter copy Exhibit W-21, and no objection was raised by the Management and that they received letter Exhibit W-22 and W-23 from the Management. He then stated that an agreement was arrived at regarding the holidays with the Union which was Exhibit W-24 and that Exhibit W-25 was the copy of the letter sent by the Union. He then stated that he received chargesheet dated 24th August, 1980 and demanded Hindi version from the Management and wrote letters Exhibit W-26 and W-27 to the Management and requested the enquiry officer to give him certain facilities, but he refused to give the same and that letters Exhibit W-28 and W-29 were the copies of the letters written by him. He then stated that letter Exhibit W-2 was also written by him and that Shri A.S. Sethi, Personnel Manager of the respondent, used to represent the management is that enquiry who was a law graduate. He then stated that he filed Civil Suit and that Exhibit W-30 was the copy of the plaint. He then stated that no stay order was given by the Civil Court in that case. He further stated that all the correspondence of the Union with the management used to take place through him and that Exhibit W-35 was the copy of the other settlement. He also stated that the enquiry was held against him in Sector 5 in the Guest House of company when he filed objection regarding the place of enquiry because his witnesses were not willing to go there. He further stated that threat was being given to him and that Shri Sakakat Hussain, Shri Udai Singh Rawat and Shri K.N. Joshi were on duty in the factory during these days and he wrote letters Exhibit W-36, to W-42 to the management, but the management did not provide facilities to him. He then stated that on 29th March, 1981 was the date fixed for the enquiry at 10-A.M. and waited there till 11.00 A.M. but neither the enquiry officer nor the representative of the management came there when he came to the factory at 11.00 and tried to hand over letter but, the Management refused to receive the same and he sent it by post, copy Exhibit W-43 and he also sent a telegramme to the Management, copies of which were Exhibit W-44 and W-45. He further stated

that he wrote the letter to the Enquiry Officer/Management, Copy Exhibit W-46, and that Exhibit W-47 and W-48 were the copies of the postal receipt, but no reply was sent by the Management. He then stated that Shri H.R. Dua was the Legal Secretary of the Union while Shri Dalip Singh was the member of the executive committee and his request that he should be represented through Shri H.R. Dua and Shri Dalip Singh, was declined by the Enquiry Officer. He further stated that he had been victimised by the Management because he was the General Secretary of the Union and had raised general demand notice and also served termination letters of the previous settlement. He then stated that he demanded gratuity as well as copy of the report made by the Enquiry Officer but to no effect and that he was not paid gratuity as well as bonus for the year 1980-81 and requested the Personnel Manager of the company to pay him bonus because his son was seriously ill, but, he refused to give the same and that Personnel Manager told him that bonus could not be paid and let the son of the workman die. He further stated that he had no money for proper treatment of his son, who ultimately died. He then stated that he was still unemployed and that he had not been able to get any job on the ground that he was a Union leader in that factory.

10. A perusal of the above evidence would show that Shri S.D. Sharma was appointed as Enquiry Officer to hold enquiry into allegations contained in the charge-sheet, dated 24th August, 1980 and 15th September, 1980, copies Exhibit M-2 and M-4. The complainant prayed for Hindi version of those charge-sheets,—*vide* letters copies Exhibit W-37 to W-39, which were supplied to him,—*vide* letter Exhibit M-1 and M-5. The claimant, however, did not submit his explanation to these charge-sheets. Evidence shows that the enquiry was fixed for 16th November, 1980 and adjourned to 13th December, 1980 and 27th December, 1980, 17th January, 1981 and 1st February, 1981 on the objections raised by the claimant, even though MW-1 Shri A. S. Sethi, Personnel Manager was examined on 17th January, 1981, but the workman did not cross-examine him on that date. The evidence further shows that objections raised by the claimant were rejected by the enquiry officer because Shri H.R. Dua and Shri Dalip Singh being outsiders could not represent the claimant while Shri Sadakat Hussain was under suspension because according to Certified Standing Orders of the Company, copy Exhibit M-30, only a co-workman could represent the claimant in that enquiry. The claimant sought adjournment to file a Civil Suit, but, no stay order was produced by him due to which the enquiry was fixed for 29th March, 1981, on which date the management has led evidence to the effect that the claimant did not come to the place of the enquiry and that *ex parte* proceedings were ordered against him when the Management examined some witnesses (MW-2 to MW-11) on that date. The evidence further shows that the claimant sent a telegram, copies Exhibit W-44 and W-45, to the effect that Enquiry Officer was not present but, the Enquiry Officer sent a telegram copy Exhibit M-33 on that very date informing the claimant that contentions raised in the telegram sent by the workman were incorrect because the Enquiry Officer and representative of the Management as well as witnesses were present at the place of enquiry but the claimant had not turned up and as such *ex parte* proceedings were ordered against the claimant. The Management also sent a telegram to the claimant on 30th March, 1981 in this respect copy Exhibit M-32 and asked the claimant to attend the enquiry. Copy of letter Exhibit M-23 shows that telegram sent by the Enquiry Officer was received by the claimant on 30th March, 1981 between 7.00 A.M. to 10.35 A.M. while copy of letter Exhibit M-26 shows that telegram sent by the management was received by the claimant on 30th March, 1981 between 4.35 P.M. to 9.00 P.M. The claimant, therefore, received the replies to both the telegrams and he was asked to join the enquiry because enquiry was being held against him *ex parte* as he did not attend the enquiry and ultimately wrote letter copy Exhibit W-46 on 6th April, 1981 and sent the same by registered post, but the enquiry was completed in the mean time because on 30th March, 1981 MW-12 to MW-17 and on 1st April, 1981 MW-18 to MW-26 were examined. It may also be mentioned that on 30th March, 1981 the Enquiry Officer examined Shri Narender Senapati Attendant in the guest house when the enquiry was being held, who deposed that on 29th March, 1981 he was present in the guest house throughout but the claimant did not turn up. Shri Onkar Sharma, Security Officer was also examined by the Enquiry Officer who stated that on 29th March, 1981 at about 11.30 A.M. the claimant came to the factory and was informed that the enquiry was being held in the guest house and that the claimant should go there even though the claimant had stated that Enquiry Officer, etc. were not there. Enquiry Officer submitted his report copy Exhibit M-34 on 6th April, 1981, in which he found the claimant guilty of all the charges on the basis of the *ex parte* evidence led by the management. On 8th April, 1981, the claimant was dismissed from service by the respondent on the basis of the enquiry report. All this evidence therefore, goes to show that the claimant did not submit his explanation to both the charge-sheets and sought a number of adjournments on 16th November, 1980, 13th December, 1980, 27th December, 1980, 17th January, 1981 and 1st February, 1981 and ultimately did not appear on 29th March, 1981 when *ex parte* proceedings were ordered against him. His plea that the Enquiry Officer/representative of the management and witnesses were not present on 29th March, 1981 can not be accepted because the Management had led evidence to prove that on that date MW-2 to MW-11 were examined by the Enquiry Officer and Shri Narender Senapati Attendant of Guest House had deposed that the claimant did not come to the place of the enquiry on 29th March, 1981. In the rulings reported as *Brooke Bond India (Private) Ltd. and S. Subha Raman and another, F.L.R. 1951 (Volume 3) page 526 (S.C.)*, *Crompton Greaves Ltd., Bombay and Shri S.W. Shinde, F.L.R. 1974 (28) page 81*, *Major U.R. Bhatt V. Union of India, F.I.R. (Vol. XXI) page 478*, *Lakshmi Devi Sugar Mills Ltd., V. Pt. Ram Sarup 1956 S.C.R. page 916*, it is laid down that *ex parte* proceedings can be held by the Enquiry officer in case the concerned party does not attend the enquiry. The representative of the workman placed reliance on the ruling reported as *M/s Khardah and Co. Ltd. V. The workman, AIR 1964 Supreme Court 719*, in which it is laid down that evidence must be led in the presence of the workman. This ruling is distinguishable on facts because in the present case, he himself did not participate in the enquiry from 29th March, 1981 for the reasons given above and as such was proceeded *ex parte*.

11. It was argued on behalf of the workmen that Mr. H.R. Dua, Dalip Singh and Sadakat Hussain were not permitted to represent the claimant in the enquiry and as such the claimant was prejudiced. Reliance was placed on the ruling reported as **The Board of Trustees of the Port of Bombay V. Dilip Kumar Raghavendranath Nadkarni and others**, 1983 (1) All India Services Law Journal page 256. In that case there was specific provision in the regulations that if the representative of the employer was legal practitioner then the employee can seek assistance by legal practitioner. This ruling is distinguishable on fact because no such regulation existed in the present case, but, on the other hand, according to Certified Standing Orders, copy Exhibit M-30, only co-workman could be permitted to represent the claimant. He failed to suggest the name of his co-workman because Shri H.R. Dua and Shri Dalip Singh were outsiders while Mr. Sadakat Hussain was a suspended workman. In the ruling reported as **Haridas Malakar and others and Jay Engineering Works**, 1975-II-J page 26, it is laid down that there was not violation of the principles of natural justice simply because the workman was not allowed to represent his case before domestic enquiry by a suspended co-workman of his choice. Argument, therefore failed.

12. It was then argued that copy of the report of the Enquiry Officer was not given to the claimant nor second show cause notice was given to him before dismissing him and as such the claimant was prejudiced. Reliance was placed on the rulings reported as **M/s. Lakshmiratan Cotton Mills Co. Ltd., and Jay Engineering Works** 1975-II-LJ page 174, **Management of Machine Tools and Ancillaries Castings (P) Ltd. Madras and Additional Labour Court and others**, 1981-I.L.L.J. page 408, **State of Maharashtra and Bai Shankar Ayalram Joshi and another**, 1970(20) F.L.R. page 289. First two rulings are based on the Model Standings Orders while 3rd ruling was given under the provisions of Article 311(2) of the Constitution and as rule are distinguishable on facts because in the present case, there was no provision in the Certified Standing Orders copy Exhibit M-30 to supply a copy of the findings of the Enquiry Officer or give him second show cause notice before passing order of dismissal. In the ruling reported as **M/s. Tannery and Footwear Corporation of India Ltd., V. State of U.P. and others**, 1979 Lab. I.C.1434, it is laid down that failure of supply of copy of enquiry report alongwith show cause notice did not amount to violation of principles of nature justice. The argument is, therefore devoid of any force.

13. It was then argued that the Plant Manager was not competent to serve charge-sheet on the claimant and dismiss him from service. Reliance was placed on the ruling reported as **Hindustan Brown Rovers Ltd. and their workmen and another**, 1968-I-LIJ page 571, in which it was held that in the absence of delegation, it was the company and not the works manager who can exercise the power of punishment under standing orders 23 and 27. This ruling is distinguishable on facts because in the present case, according to clause 22(ii) of the Certified Standing Orders of the company, copy Exhibit M-30, the Manager was competent to chargesheet and dismiss the workman.

14. It was then argued on behalf of the workman that list of witnesses of the management was not supplied to the workman, which was demanded by him on 13th December, 1980. As already mentioned above, the claimant did not participate in the enquiry with effect from 19th March, 1981 and as such *ex parte* enquiry was held against him. It was argued on behalf of the Management that the claimant did not submit his explanation to both the charge-sheets which amounted to admission of the charges levelled against him and that no prejudice was caused to the claimant, merely because the list of witnesses was not supplied to him, especially when he did not participate in the enquiry. Reliance was placed on the ruling reported as **Tripathi, K.L. and State Bank of India and others**, 1984-I.L.L.J. page 2, in which it is laid down that a party who does not want to controvert the veracity of the evidence or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross examination, especially when it was not asked for and there was no dispute about the veracity of the statement. Consequently by not submitting any explanation to the chargesheets and by not participating in the enquiry with effect from 29th March, 1981, the claimant can not say that he was prejudiced because the copy of the list of witnesses was not supplied to him when he did not avail of the right of cross-examination of the witnesses.

15. It was further argued that the claimant was a protected workman as mentioned in the documents Exhibit W-19 to W-22 and being a General Secretary of the Union he had written a number of letters *Viz.* Exhibit W-3, W-5 to W-9, W-11, W-12, W-13, W-15, W-16 and W-23 and he was victimised by the Management being General Secretary of the Union. The argument does not carry any weight because the workman did not submit his explanation to both the charge-sheets inspite of opportunities and did not participate in the enquiry with effect from 29th March, 1981. Consequently the enquiry was held against him and disciplinary action was not taken against him on the ground that he was General Secretary of the Union and his plea regarding alleged victimisation does not appear to be correct.

16. The Enquiry Officer examined 26 witnesses as mentioned above and after considering their evidence, he submitted his report, copy Exhibit M-34 to the effect that all the charges mentioned in the charge-sheets copy Exhibit M-2 and M-4 stood proved. Since the claimant did not participate in the enquiry, no evidence was led nor witnesses were cross examined by him. The evidence led by the witnesses, therefore, remains un rebutted. Consequently, it cannot be held that the report of the Enquiry Officer is not based on any cogent evidence. It is not necessary to repeat the evidence produced before the Enquiry Officer because being *ex parte* evidence no fault can be found within the same especially when witnesses were not cross-examined by the claimant as mentioned above.

17. It may however be mentioned that I have gone through the testimony of all the 26 witnesses examined by the Enquiry Officer and on the basis of their *ex parte* evidence. The findings given by the Enquiry Officer cannot be interfered with.

18. In view of the above discussion, it is held that *ex parte* enquiry against the claimant was fair and proper. Issue No. 2 is decided accordingly in favour of the management. It is further held that the claimant has failed to prove that he was victimised by the management. Issue No. 3 is decided accordingly against the workman.

19. It was argued on behalf of the workman that the punishment awarded to the workman was a hard one because during this struggle he lost his son who died because no proper treatment could be given to him for want of funds as stated by him while appearing as WW-1. In the ruling reported as **The East India Hotels Versus Their Workmen and others**, 1974 Lab. I.C. page 532, **The General Manager, Chandigarh Transport Undertaking Chandigarh Versus Ranjit Singh and another**, 1982 Lab. I.C. page 604, **M/s Bengal Bhatdee Coal Co. Versus Shri Ram Prabesh Singh and others**, 1964 (Vol. I) SCR. page 709, it is laid down that under provisions of Section 11-A of the Industrial Disputes Act, 1947, the Tribunal can interfere with the punishment in appropriate cases if the punishment is harsh. Keeping in view the particular circumstance of this case and the mitigating circumstance that the claimant lost the precious life of his son during this struggle, it is a fit case in which the punishment of dismissal being harsh one be set aside and for his gross misconduct the claimant should be deprived of his backwages as well as one annual increment. Consequently the punishment of dismissal is set aside and the claimant be reinstated but without backwages and would not be entitled one annual increment. The award is passed accordingly.

Dated 28th January, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst No. 94, dated the 28th January, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab./806—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Maheshwari Fasteners Pvt. Ltd., 14/6, Mathura Road, Faridabad.

BEFORE SHRI. R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 154/1983

between

THE MANAGEMENT OF M/S MAHESHWARI FASTENERS PVT. LTD., 14/6, MATHURA
ROAD, FARIDABAD AND ITS WORKMEN

Present :—

Shri M. K. Bhandari, for the workmen.

None, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the Management of M/s Maheshwari Fasteners Pvt. Ltd., 14/6, Mathura Road, Faridabad, and its workmen to this Tribunal for adjudication :—

Whether the action of the Management to close down the factory w.e.f. 1-7-1982 was justified and in order? If not, to what relief the workmen are entitled.

2. Notices were issued to both the parties. The workmen in their claim statement, dated 8-1-1983 alleged that 23 workmen whose names were given in the demand notice, dated 24-8-82, were employed with the respondent and that on 1-7-1982, the respondent closed down the factory in an illegal manner at 9.45 P.M.

It was alleged that the respondent had not deposited the Provident fund of all the workmen for the period from 1978 to 1981 and had also not complied with the formalities of the Provident Fund Department when the workmen reported the matter to the Provident Fund Authority etc, but, the the respondent closed down the factory in order to avoid any action in the matter in an illegal manner and had not complied with the provisions of the Industrial Disputes Act, 1947, relating to closure nor they had paid wages to any workmen for the month of June, 1982. It was then alleged that the management had closed down the factory in order to victimise the workmen. It was, therefore, prayed that the management be directed to lift the closure and provide jobs to the workmen with full back wages declaring the closure as unjustified.

3. It may be mentioned that on 11-12-1984, none appeared on behalf of the Management even though they were represented previously and as such *ex parte* proceedings were ordered against the management. The workmen examined WW-1 Shri Vijay Kumar Jha who stated that he was employed by M/s Maheshwari Fastners (P), Ltd., Faridabad and was General Secretary of the Union. He further stated that the Union of Maheshwari Fastners and Maheshwari Wire Industries was the same and represented all the workmen of both these factories. He also stated that both these factories belonged to one proprietor and were situated in the same building. He further stated that the respondent factory was closed down because its proprietor had not deposited the Provident Fund amounting to Rs. two lakhs and that the Union had filed complaint regarding the same, copies of which were Ex. W-1 to W-3. He then stated that letters Ex. W-4, and W-5 were written by them and that no notice was pasted on the notice board by the respondent at the time of closure of the factory nor the workmen were given the amount due to them nor any such amount was offered to them. He further stated that in conciliation proceedings the Management did not appear and that Ex. W-6 and W-7 were copies of the conciliation proceedings. He then stated that the respondent had closed down the factory because they had not deposited the provident fund and that the factory had been closed down in an illegal manner. WW-2 Shri Prikshan Rai stated that he used to work in the respondent factory. He further stated that M/s Maheshwari Fastners Pvt. Ltd and Maheshwari Wire Industries were situated in the same building and were owned by the same proprietor. He then stated the respondent closed down the factory because they had not deposited the provident fund with the competent authority and that the factory was closed down in an illegal manner. WW-3 Shri Hanuman Parshad stated that he used to work in M/s Maheshwari Wire Industries, Faridabad. He further stated that Maheshwari Fastners and M/s Maheshwari Wire Industries were situated in the same building and that the Union of both the factories was the same. He further stated that he was member of the Working Committee and that the respondent factory was closed down by the proprietor because they had not deposited the provident fund with the competent authority. He then stated that respondent factory was closed down in an illegal manner, and that no notice was pasted before closing this factory nor the amount due to the workmen was paid to them.

4. A perusal of the testimony of WW-1 Shri Vijay Kumar, WW-2 Shri Prikshan Ram and WW-3 Shri Hanuman Parshad and recitals made in the documents Ex. W-1 to W-7, go to show that the respondent factory was closed down by the respondent because they had not deposited the provident fund with the competent authority. The version of WW-1 Shri Vijay Kumar in this respect, finds corroboration from the testimony of WW-2 Shri Prikshan Rai and WW-3 Shri Hanuman Parshad. In the documents produced by the workmen, the same plea was repeated. There is evidence in rebuttal from the opposite side because none appeared on their behalf on 11-12-1984, due to which *ex parte* proceedings were ordered against them. Consequently the *ex parte* evidence led by the workmen goes to show that the closure of the respondent factory with effect from 1-7-1982 was not justified and in order. According to the provisions of Section 25-FFF of the Industrial Disputes Act, 1947, were an undertaking is closed down for any reason whatsoever every workmen, who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to notice pay and compensation in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 as if the workman has been retrenched. As such all the workmen are entitled to notice pay and compensation in accordance with the provisions of Section 25-F of this Act upto the date of closure i.e. 1-7-1982. The award is passed accordingly.

Dated 30th January, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 97, dated the 30th January 1985

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section-15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.